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SUPREME COURT OF THE UNITED STATES

UNITED STATES v. VERNON WATTS

UNITED STATES v. CHERYL PUTRA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 95-1906. Decided January 6, 1997

JUSTICE SCALIA, concurring.

I do not agree with the assertion in JUSTICE BREYER's concurrence that there is no obstacle to the Commission's reversing today's outcome by mandating disregard of the information we today hold it proper to consider. Title 28 U. S. C. §994(b)(1) requires the Guidelines to be "consistent with all pertinent provisions of title 18, United States Code." In turn, 18 U. S. C. §3661 provides that "[n]o limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence." In my view, neither the Commission nor the courts have authority to decree that information which would otherwise justify enhancement of sentence or upward departure from the Guidelines, may not be considered for that purpose (or may be considered only after passing some higher standard of probative worth than the Constitution and laws require) if it pertains to acquitted conduct. If the Commission believes that the rules of evidence and proof established by the Constitution and laws are inadequate, it may of course recommend changes to the Congress, cf. 28 U. S. C. §994(w).

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